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COURT OF APPEAL, FOURTH DISTRICT

DIVISION TWO

STATE OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. MICHAEL ERVING ARBUCKLE, Defendant and Appellant.	E028246 (Super.Ct.No. HEF002911) O P I N I O N

APPEAL from the Superior Court of Riverside County. Albert J. Wojcik, Judge. Affirmed.

David P. Lampkin, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Gary W. Schons, Senior Assistant Attorney General, Jeffrey J. Koch, Deputy Senior Assistant Attorney General, and Rhonda L. Cartwright-Ladendorf, Supervising Deputy Attorney General, for Plaintiff and Respondent.

Following the denial of defendant's suppression motion (Pen. Code, § 1538.5),[1] he pled guilty to two counts of grand theft from the person (§ 487, subd. (c)) and the court imposed a prison term of three years and eight months.

Defendant challenges the denial of his motion, arguing the officer unlawfully detained him. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

At the hearing on defendant's suppression motion, Hemet Police Officer Huff testified he was flagged down by Rayburn Rosewell at approximately 6:10 a.m. on December 10, 1999. Rosewell told Officer Huff that he had been robbed at gunpoint at the Bank of America.

Although Rosewell was hysterical and first said the robber was 5 feet, 5 inches tall, he later described the robber as a light-skinned Black or a dark-skinned Hispanic man, approximately 5 feet, 8 inches tall, weighing 175 pounds. Rosewell said the robber's lower face was covered with some type of white scarf or material and he had worn a white stocking cap, so Rosewell could see only the robber's forehead, eyes and the bridge of his nose. Rosewell also said the robber had something other than gloves covering his hands and he was holding a gun. Rosewell's wife said that, while she did not get a good look at the robber, she was sure he was a Black man.

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[1] Defendant moved to suppress "all observations by the officers, the clothing items worn by [defendant] on said date, subsequent photographic and in person line-up identifications, a check seized at [defendant's] residence, and any other fruits." All future statutory references are to the Penal Code unless otherwise indicated.

On December 18 at 5:55 a.m., Officer Huff was driving to work when he noticed defendant, running southbound across East Florida Avenue towards the bank. Defendant is a light-skinned Black male, about 5 feet, 10 inches or 5 feet, 11 inches tall. Officer Huff's suspicions were aroused because he was about 100 yards from the bank where the Rosewell robbery and another robbery about two weeks earlier had occurred. Both robberies were at that approximate time of the early morning. Also, defendant "had a white T-shirt over his shoulder," although he was wearing a shirt and a Pendleton-type jacket. Officer Huff advised dispatch that he was conducting a pedestrian check.

Officer Huff, a uniformed officer, got out of his marked patrol car and approached defendant from the front. He asked if he could talk to defendant for a minute and defendant agreed. Officer Huff had not drawn his gun. He asked defendant's name, where he was going, and what he was doing out at that time of the morning. Defendant said he was walking to his girlfriend's house on Latham Street near the police station. This seemed unusual to Officer Huff because there was no need for defendant to cross East Florida Avenue to get to Latham Street.

Defendant gave Officer Huff consent to search him and Officer Huff found a pair of white socks in defendant's pockets. This raised another "red flag" because the robbery victim had told Officer Huff that the robber had something white, but not gloves, covering his hands.

Defendant identified himself as Michael Tee Robinson. Officer Huff gave the name to dispatch with the middle initial "T," rather than the name "Tee." To assist dispatch, Officer Huff asked defendant what his middle name was and defendant spelled out "T-e-e."

Officer Huff advised dispatch of the middle name. Dispatch was unable to match the name to a driver's license, identification or reported contact. This meant that "Michael Tee Robinson" had "no contact of any type in California."

Defendant told Officer Huff that he lived at 1306 Avenida Florabunda in San Jacinto, but that address came up negative through dispatch. Officer Huff thought this also was suspicious.

Officer Huff asked defendant where he was from. Defendant answered he originally was from California, but had just returned from Illinois. Officer Huff asked dispatch to run the name "Michael Tee Robinson" through the Illinois database. Dispatch found no match in Illinois.

Officer Huff asked defendant whether he had ever received a ticket in California and defendant said he had. That meant there should have been a match, so Officer Huff continued to interview defendant because his suspicions increased.

Officer Huff told defendant he was stopped because he matched the description of a suspect in two previous early morning robberies in the area. Officer Huff was trying to determine whether defendant was the suspect. Officer Huff asked if he could take a picture of defendant to rule him out as a suspect, but defendant refused. After Officer Huff said he could take defendant to the station where his identity could be determined, defendant said he was "Michael Earvin Arbuckle." He also gave his date of birth as May 25, 1977. Officer Huff radioed this information to dispatch. Dispatch reported that defendant had outstanding warrants for giving false information to an officer, driving on a suspended license, and failing to pay a fine. Officer Huff arrested defendant.

The parties stipulated that four minutes and fifty-five seconds after Officer Huff first reported he was conducting a pedestrian check, he asked dispatch to check the name "Michael T. Robinson." Twenty-two seconds later, Officer Huff reported the middle name was "Tee." Fifteen minutes and twenty-six seconds after the pedestrian check was called in, Officer Huff asked dispatch to check on the San Jacinto address. Twenty minutes and forty seconds elapsed from the time Officer Huff reported he was initiating a pedestrian check to the time defendant gave his correct name. Twenty-five minutes and seventeen seconds elapsed before dispatch advised Officer Huff of defendant's outstanding warrants.

The trial court denied defendant's suppression motion, finding the initial contact was a consensual encounter, the subsequent detention was justified by the totality of the circumstances, and the detention was not unduly prolonged.

DISCUSSION

On appeal, defendant contends the trial court erroneously denied his motion because the officer's suspicions were not reasonable and he had no right to detain defendant for a warrant check. The People respond the trial court properly found the initial contact was a consensual encounter, the circumstances supported a brief detention, and the officer did not unduly prolong the detention. We affirm.

In reviewing the denial of a suppression motion, we defer to the trial court's factual findings where supported by substantial evidence, but exercise independent judgment to determine whether, on the facts found, the search was reasonable under Fourth Amendment standards. (*People v. Leyba* (1981) 29 Cal.3d 591, 596-597; *Ornelas v. United States* (1996) 517 U.S. 690.)

"Police contacts with individuals may be placed into three broad categories ranging from the least to the most intrusive: consensual encounters that result in no restraint of liberty whatsoever; detentions, which are seizures of an individual that are strictly limited in duration, scope, and purpose; and formal arrests or comparable restraints on an individual's liberty. [Citations.]" (*In re Manuel G.* (1997) 16 Cal.4th 805, 821.)

Our present inquiry concerns the distinction between consensual encounters and detentions. "Consensual encounters do not trigger Fourth Amendment scrutiny. [Citation.] Unlike detentions, they require no articulable suspicion that the person has committed or is about to commit a crime. [Citation.] [¶] The United States Supreme Court has made it clear that a detention does not occur when a police officer merely approaches an individual on the street and asks a few questions. [Citation.] As long as a reasonable person would feel free to disregard the police and go about his or her business, the encounter is consensual and no reasonable suspicion is required on the part of the officer. Only when the officer, by means of physical force or show of authority, in some manner restrains the individual's liberty, does a seizure occur. [Citations.] '[I]n order to determine whether a particular encounter constitutes a seizure, a court must consider all the circumstances surrounding the encounter to determine whether the police conduct would have communicated to a reasonable person that the person was not free to decline the officers' requests or otherwise terminate the encounter.' [Citation.] This test assesses the coercive effect of police conduct as a whole, rather than emphasizing particular details of that conduct in isolation. [Citation.] Circumstances establishing a seizure might include any of the following: the presence of several officers, an officer's display of a weapon, some

physical touching of the person, or the use of language or of a tone of voice indicating that compliance with the officer's request might be compelled. [Citations.] The officer's uncommunicated state of mind and the individual citizen's subjective belief are irrelevant in assessing whether a seizure triggering Fourth Amendment scrutiny has occurred. [Citation.]" (*In re Manuel G., supra,* 16 Cal.4th 805, 821.)

Applying the foregoing principles, we conclude the trial court properly determined the initial contact was a consensual encounter. Only one officer approached defendant, his weapon was not unholstered, and there is no evidence of language or tone indicating compliance was required when Officer Huff approached and asked if he could talk to defendant. At this point, defendant's freedom of movement was not curtailed and he agreed to talk to Officer Huff.

We further conclude that Officer Huff was justified in detaining defendant to determine whether he was the early morning robber. "A detention is reasonable under the Fourth Amendment when the detaining officer can point to specific articulable facts that, considered in light of the totality of the circumstances, provide some objective manifestation that the person detained may be involved in criminal activity." (*People v. Souza* (1994) 9 Cal.4th 224, 231.)

In this case, the totality of the developing circumstances disclose defendant was present in the area of the previous two robberies at approximately the same early morning hour. He was similar in appearance to the robber. Although he was warmly dressed, he was carrying a T-shirt that he could have used to cover the lower part of his face and he had white socks in his pockets that he could have used to cover his hands. His professed

destination was inconsistent with his path of travel. These facts justified Officer Huff's decision to continue the investigatory detention by checking with dispatch. Although, as defendant argues, the circumstances did not necessarily indicate criminal activity, "'innocent behavior will frequently provide the basis for a showing of probable cause'"; "'. . . the relevant inquiry is not whether particular conduct is "innocent" or "guilty," but the degree of suspicion that attaches to particular types of noncriminal acts.'" (*United States v. Sokolow* (1989) 490 U.S. 1, 10, quoting *Illinois v. Gates* (1983) 462 U.S. 213, 243-244, fn. 13; *People v. Souza, supra,* 9 Cal.4th 224, 233.)

Officer Huff's suspicions increased when he received negative responses from dispatch, particularly after defendant acknowledged having received a traffic ticket. Officer Huff testified the negative responses meant that defendant had "no record, no contact of any type in California," but there should have been a match because "he had told [the officer] that he had gotten a ticket in California."

Finally, we conclude Officer Huff did not unduly prolong the detention. It is well-settled that "an investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop." (*Florida v. Royer* (1983) 460 U.S. 491, 500.) It is also well-settled that there is no rigid formula for determining how long a detention may last. (*United States v. Sharpe* (1985) 470 U.S. 675, 686.) The question is whether the officer diligently pursued a means of investigation reasonably designed to confirm or dispel his suspicions quickly. (*People v. Soun* (1995) 34 Cal.App.4th 1499, 1520.) Facts which come to light during the detention may provide reasonable suspicion to prolong the detention. (*People v. Russell* (2000) 81 Cal.App.4th 96, 102.)

The parties stipulated that approximately 25 minutes elapsed between Officer Huff's report that he was making a pedestrian check and the dispatch report of defendant's outstanding warrants. In *People v. Avalos* (1996) 47 Cal.App.4th 1569, 1575, 1577, the court determined a 25-minute detention was lawful although it was extended for an additional 15 to 20 minutes because of the need to obtain a Spanish-speaking officer to communicate with Avalos. In *People v. Dasilva* (1989) 207 Cal.App.3d 43, 50, the court upheld a 20- to 25-minute detention while "the officer contacted Dasilva, sought a license and registration, radioed Oregon, obtained a response, checked the interior of the car for the registration, sought to inspect Dasilva's wallet for proof of identification and twice more radioed inquiries concerning two other identifications Dasilva gave." In *United States v. Sharpe, supra,* 470 U.S. 675, the defendant was detained 20 minutes when a DEA agent enlisted the help of local officers who remained with the defendant's accomplice while the agent went to the detention site where he proceeded expeditiously and the delay was attributable almost entirely to the evasive actions of the defendant, who sought to elude the agent. In the three cases, *Avalos, Dasilva* and *Sharpe,* the 20- to 25-minute detentions were upheld where the prosecution produced evidence that established the officers were not dilatory during the detentions. Similarly, in this case, Officer Huff's testimony established that he was diligently pursuing his investigation during the 25-minute detention until it culminated in the report of defendant's outstanding warrants.

In view of the foregoing, Officer Huff did not unlawfully detain defendant.

The trial court properly denied the suppression motion.

DISPOSITION

The judgment is affirmed.

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HOLLENHORST
J.

We concur:

RAMIREZ
P. J.

WARD
J.